

RECORDATION NO. _____ Filed & Recorded

AUG 20 1970 -2 50 PM

INTERSTATE COMMERCE COMMISSION

Lease of Railroad Equipment

between

ALLIS-CHALMERS LEASING CORPORATION

and

THE WESTERN PACIFIC RAILROAD COMPANY

Dated as of August 1, 1970

LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1970, between ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Lessor), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into four Manufacturing Agreements each dated as of August 1, 1970 (hereinafter called the Manufacturing Agreements), with THE DARBY PRODUCTS OF STEEL PLATE CORPORATION, GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), THE MAXSON CORPORATION and PACIFIC CAR AND FOUNDRY COMPANY (hereinafter referred to as the Manufacturers), respectively, wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Appendix A hereto; and

WHEREAS, the Lessee desires to lease all the units of said equipment or such lesser number of units thereof as are delivered to and accepted under the Manufacturing Agreements on or prior to November 13, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the

Manufacturing Agreements. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarter-annual payments payable on February 15, May 15, August 15 and November 15 of each year, commencing November 15, 1970; *provided, however*, that if any of such payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such quarter-annual payment shall be in an amount equal to 3.05353275% of the Purchase Price (as such term is defined in the Manufacturing Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease less .0250% of the Purchase Price of such Unit for each day elapsed from and including August 15, 1970 to and including the business day immediately prior to the Closing Date (as such term is defined in the Manufacturing Agreement pursuant to which such Unit is being acquired by the Lessor) in respect of such Unit, and the 59 remaining quarter-annual payments shall each be in an amount equal to 3.05353275% of said Purchase Price of each such Unit.

All rentals and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor, by depositing the amount of such rental or

other payment to the account of the Lessor, number 0101-01508 at Crocker-Citizens National Bank, One Sansome Street, San Francisco, California after the close of business on the business day immediately prior to the date such rental or other payment is due or, in the event of an assignment of this Lease by the Lessor, at such other place and in such other manner as the Lessor shall in writing direct.

All sums payable under this Lease shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and accept-

ance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due hereunder.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Appendix A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“ALLIS-CHALMERS LEASING CORPORATION,
OWNER AND LESSOR”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may

cause the Units to be lettered "Western Pacific Railroad" or "Western Pacific" or "W. P." or with other names or initials or insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than (i) any federal income or other similar taxes measured by net income payable by the Lessor in consequence of the receipt of such payments, and (ii) all state, city or local income taxes, gross receipts or other taxes measured by net income [the taxes enumerated in clauses (i) and (ii) being hereinafter collectively called the Excluded Taxes], except any such taxes which are in substitution for or relieve the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments other than for Excluded Taxes, or license fees and any charges, fines or penalties in connection therewith (hereinafter called Impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Manufacturing Agreements, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which

might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, Lessor shall promptly notify Lessee of the Impositions charged or levied, and Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event that the Lessor shall become obligated to make any payment to the Manufacturers pursuant to Article 7 of the Manufacturing Agreements not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 7.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show ownership of such Units by the Lessor or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within fifteen business days after the Lessee shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor in writing with respect thereto. On the rental payment date next succeeding such notice (or in the event such rental payment date shall occur within 30 business days after such notice shall have been given, then on the next succeeding rental payment date) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event any Unit is completely destroyed or irreparably damaged, the Lessee shall, as agent for the Lessor, dispose of such Unit as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Unit so disposed of, the Lessee may retain all amounts of such price and any damage payments or awards received by the Lessee by reason of the Casualty Occurrence up to the Casualty Value attributable to such Unit, and shall remit the excess if any to the Lessor. In disposing of such Unit, the Lessee shall take such action as the Lessor shall reasonably request, to terminate any con-

tingent liability which the Lessor might have arising after such disposition from or connected with such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103.9%	31	80.6%
2	103.8	32	79.0
3	103.7	33	77.4
4	103.6	34	75.8
5	103.4	35	74.1
6	103.2	36	72.3
7	102.9	37	70.5
8	102.5	38	68.6
9	102.1	39	66.7
10	101.7	40	64.8
11	101.2	41	62.8
12	100.6	42	60.7
13	100.0	43	58.6
15	99.3	44	56.4
15	98.6	45	54.2
16	97.9	46	52.0
17	97.1	47	49.6
18	96.3	48	47.2
19	95.4	49	44.8
20	94.4	50	42.3
21	93.4	51	39.8
22	92.4	52	37.3
23	91.3	53	33.7
24	90.1	54	30.0
25	88.9	55	29.3
26	87.6	56	26.5
27	86.3	57	23.7
28	85.0	58	20.8
29	83.6	59	18.0
30	82.1	60 and thereafter	15.0

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it, and the Lessee shall furnish to the Lessor such copies of the policies, or other evidences of such insurance as the Lessor shall reasonably request. Such insurance shall be payable to the Lessor and the Lessee as their interests may appear. All insurance proceeds received by the Lessor shall be paid over to the Lessee if the Lessee has fully complied with all of its obligations and indemnifications hereunder in respect of the risk insured against for which such proceeds were paid by the insurance company.

§ 7. *Annual Reports; Financial Information.* On or before August 1, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings re-

quired by § 4 hereof shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

So long as this Lease shall remain in force with respect to any Unit, the Lessee will furnish to the Lessor (i) as soon as available, and in any event within 30 days after the end of each quarter of each fiscal year, such statements of the financial condition and results of operations of the Lessee (which need not be audited) as the Lessor shall reasonably request and (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the audited balance sheet of the Lessee as at the end of such fiscal year and of the audited statements of income and retained earnings of the Lessee for such fiscal year. Such audited balance sheet and statements shall be prepared in reasonable detail, in accordance with generally accepted accounting principles, and shall be accompanied by a report and opinion of independent public accountants of recognized standing selected by the Lessee, which report and opinion shall be based upon an examination made in accordance with generally accepted auditing standards.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to**

(except as the same may differ because of accounting regulations for railroads prescribed by the Interstate Commerce Commission or other regulatory agency having jurisdiction).

EDM L. MAB

the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as Purchaser, under the provisions of Articles 5 and 6 of, and Item 4 of Annex A to, the Manufacturing Agreements. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units to the extent such laws or rules affect the operation or use of the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as

it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

The Lessee agrees that it will maintain and keep, or cause to be maintained and kept, each Unit which is subject to this Lease in good order and repair without cost to the Lessor.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit (except those which can be removed without damage to, and without impairing the originally intended function or use of, such Unit, including, without limitation, racks, partitions or data recording and monitoring systems [hereinafter called the Temporary Alterations] and which were not included in the Purchase Price of the Unit) and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor. Upon termination of this Lease, the Lessee will remove the Temporary Alterations from the Units and restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted.

The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or the performance of the Manufacturing Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering,

acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in § 16 of this Lease. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability (including strict liability in tort) on account of any accident in connection with the operation, use, condition, possession or storage (except as provided in §§ 10 and 13 of this Lease) of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five business days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 business days after written notice from the Lessor to the Lessee spe-

cifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed

(whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any rights of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a

penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 9% per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim or disallowed in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the

amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended, or any successor section thereto (herein called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, have paid to the Lessor the supplemental rent in respect of such Unit determined as provided in the second paragraph of § 15 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such

Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee recognizes that the Lessor may, in the future, grant a security interest in the Units to secure one or more loans to the Lessor and that, in connection with such loans, the Lessor anticipates assigning this Lease to the lenders making such loans, or an agent or trustee for such lenders, as collateral security therefor pursuant to a Collateral Assignment of Lease and Agreement substantially in the form of Appendix B hereto (hereinafter called the Collateral Assignment) with such changes therein as the Lessor shall reasonably deem necessary. The Lessee agrees, upon request of the Lessor, to cause a Lessee's Consent and Agreement to such Collateral Assignment, substantially in the form of Annex I to Appendix B hereto (hereinafter called the Consent and Agreement) with such changes therein as may reasonably be requested by the Lessor, to be duly executed and delivered to any such assignee and to furnish to such assignee all such opinions of counsel and other closing papers in connection therewith as shall reasonably be requested by the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance

(other than a lien, charge, security interest or other encumbrance created by the Lessor after the date of this Lease, including, without limitation, a security interest contemplated by the second sentence of the immediately preceding paragraph of this § 11 or an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee or any affiliate or subsidiary which is a common carrier by railroad shall be entitled to the possession of the Units and to the use thereof upon the lines of railroad owned or operated by it or any affiliate or subsidiary which is a common carrier by railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other railroads or carriers in the usual interchange of traffic and equipment, if customary at the time, and upon connecting and other railroads or other carriers over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11. The Lessee may receive and retain compensation for such use from other railroads and other carriers so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to

any corporation (which shall have duly assumed the obligations of the Lessee hereunder under the Manufacturing Agreements and the Consent and Agreement, if any) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; *provided, however*, that no such assignment or transfer shall be made if, after giving effect thereto, any Unit would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended.

The Lessee agrees that during the term of this Lease the Lessee will not regularly use or permit the regular use of any Unit outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease which, in the opinion of the Lessor, have a remaining useful life greater than the extended term, for each of three successive five-year periods commenc-

ing on the scheduled expiration of the original term of this Lease, provided that no such extended term shall extend beyond August 15, 2000, at a rental equal to the "Fair Rental Value" of such Units, payable in 20 quarter-annual payments on February 15, May 15, August 15 and November 15 of each year of the applicable extended term and/or (b) to purchase all, but not fewer than all, of such Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of such Units, the Fair

or such remaining
useful life of any
Unit,

JDM L.P. MdB

Market Value or the Fair Rental Value, as the case may be, shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor

or whether any
Unit shall have
a remaining
useful life
greater than
the extended term

JDM L.P. MdB

and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless such Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore pro-

vided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which, after the expiration of this Lease with respect to such Unit, the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from, all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 14. *Opinions of Counsel for the Lessee and the Lessor.* On each Closing Date (as defined in the Manufacturing Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of California, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms, and the Consent and Agreement has been duly authorized and, when executed and delivered, will constitute a valid, legal and binding agreement of the Lessee;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recording will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Consent and Agreement;

E. the entering into and performance of this Lease or the Consent and Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

On each Closing Date, the Lessor will deliver to the Lessee counterparts of the written opinion of counsel for

the Lessor, addressed to the Lessee, in scope and substance satisfactory to the Lessee and its counsel, to the effect that:

A. the Lessor is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Wisconsin with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a valid, legal and binding agreement of the Lessor; and

C. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to an owner of property, including (without limitation) the Rapid Amortization Deduction (as defined in § 9 of this Lease), with respect to the Units.

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Unit available to non-railroad lessors of railroad equipment because such Unit shall not be “qualified railroad rolling stock” within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder (other than a failure to be “qualified railroad rolling stock” because of action taken or permitted by the Lessor with respect to title to the Units or otherwise), the rental rate applicable to such

Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased to such rental rate for such Unit as, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Cravath, Swaine & Moore, or other independent counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest to the Lessor as aforesaid, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Rapid Amortization Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, on the next succeeding rental payment date after such judgment or decree shall have become final, the rental rate in respect of such Unit set forth in § 2 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse the Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the ~~first~~ paragraph of this § 15 and the rental rate applicable to such Unit pursuant to § 2 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the second paragraph of this § 15, over (ii) the difference between (A) an amount equal to interest at the rate of 10% per annum on the amount of any federal income taxes paid by the Lessor on account of the disallowance or inability to claim the Rapid Amortization Deduction on such Unit and (B) the amount of any interest to which the Lessor ~~is~~ entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) above exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor, promptly on demand.

second

would be

The agreements of the Lessor and the Lessee to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under each Manufacturing Agreement, the Lessor, as a condition to its obligation to lease the units to the Lessee hereunder, shall have received counterparts of the written opinion of

Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Internal Revenue Code of 1954, as amended), as provided for in said Section 184, whichever the Lessor elects.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing and recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor and the Lessee will each pay one-half of the reasonable costs and expenses involved in the preparation and printing of this Lease and the Manufacturing Agreements. The Lessee will pay the fees and disbursements of its counsel and one-half of the fees and disbursements, if any, of counsel for the Lessor.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $10\frac{1}{2}\%$ per annum or the maximum amount permitted by law, whichever is the lesser, of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, addressed as follows:

if to the Lessor, at Box 512, Milwaukee, Wisconsin 53201, attention of J. D. Maddry, Vice President and General Manager,

if to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention of Vice President—Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of August 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals

to be hereunto affixed and duly attested, all as of the date first above written.

ALLIS-CHALMERS LEASING
CORPORATION,

by *J. D. Maddy*.....
Vice President and
General Manager

[CORPORATE SEAL]

Attest:

M. D. Babb.....
~~Assistant Secretary~~

THE WESTERN PACIFIC RAILROAD
COMPANY,

by *L. H. Vegeler*.....
~~Vice President—Finance~~

[CORPORATE SEAL]

Attest:

L. H. Vegeler.....
Secretary

STATE OF WISCONSIN }
 COUNTY OF *Milwaukee* } ss.:

On this *15th* day of August, 1970, before me personally appeared *J D Madhry*, to me personally known, who, being by me duly sworn, says that he is the Vice President and General Manager of ALLIS-CHALMERS LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Richard F. Ellis

Notary Public

My commission expires **RICHARD F. ELLIS**
 Notary Public, State of Wisconsin
Commission Is Permanent

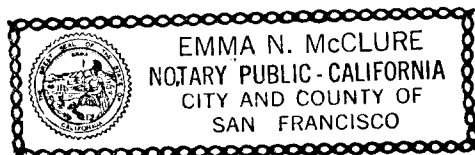
STATE OF CALIFORNIA }
 CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this *17th* day of August, 1970, before me personally appeared *F. G. Teyeler*, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Emma N. McClure

Notary Public

[NOTARIAL STAMP]



My Commission Expires April 5, 1971

5720

APPENDIX A

<u>Type</u>	<u>Manufacturer's Specifications*</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>
2220 cu. ft. 100-ton open top hopper cars	No. 70-7013	The Darby Products of Steel Plate Corporation	47	WP 10001- 10047
3000 H. P. Model GP-40 diesel electric locomotives	No. 8056 dated June 2, 1969, as amended by No. 8056-3 dated July 1, 1968	General Motors Corporation (Electro- Motive Division)	10	WP 3517- 3526
65'6" 100-ton drop end gondola cars	No. 270 dated November 3, 1969	The Maxson Corporation	15	WP 9051- 9065
50'6" 70-ton insulated box cars	PC-169 dated October 8, 1969	Pacific Car and Foundry Company	100	WP 68226- 68325

*As modified by agreements between the Manufacturer and the Lessee to the date hereof.

APPENDIX B

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of _____, 197____, by and between ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Company), and

(hereinafter called the Secured Party), under dated as of _____, 197____, (hereinafter called the Security Agreement), between the Secured Party and the Company.

WHEREAS the Company, as Lessor, and The Western Pacific Railroad Company, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Security Agreement), providing for the leasing by the Company to the Lessee of the Units (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Security Agreement and as an inducement to the Lenders under the Security Agreement to advance their funds to the Lessor pursuant to the Security Agreement, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Secured Party;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Security Agreement, the Company hereby assigns, transfers, and sets over unto the Secured Party all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or

pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Secured Party at [address at which Secured Party desires payments to be made]. The Secured Party will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable under the Security Agreement and the Secured Party shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts then due and payable by the Company under the Security Agreement; and *second*, so long as, to the actual knowledge of the Secured Party, no Event of Default (as defined in the Security Agreement) shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Secured Party. So long as, to the actual knowledge of the Secured Party, an Event of Default shall then be continuing, the Secured Party shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Security Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Security Agreement in

the event that such amounts shall have been paid by the Lessee pursuant to the Lease, the Security Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Secured Party.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Secured Party not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified

therein; to hold any Payments received by the Company which are assigned and set over to the Secured Party by this Assignment in trust for the Secured Party and to turn them over to the Secured Party forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Secured Party, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Secured Party may appear.

(c) That should the Company fail to make any payment or to do any act herein provided, then the Secured Party, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Secured Party may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Secured Party, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Secured Party under the authority hereof, together with interest thereon at the rate of % per annum.

4. The Company does hereby constitute the Secured Party the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Secured Party may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Security Agreement the assignment made hereby and all rights herein assigned to the Secured Party shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Security Agreement have each been duly authorized, and the Lease, this Assignment and the Security Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease (except assignments made expressly subject hereto in the manner permitted by Paragraph 14 hereof and § 11 of the Lease) and the Secured Party's right to receive all payments under the Lease is and

will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Security Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Security Agreement on or prior to the date hereof and (e) the Lease and the Security Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Security Agreement) or any event which with notice and/or lapse of time would constitute such an Event of Default.

If an Event of Default (as defined in the Security Agreement) shall occur and be continuing, the Secured Party shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Secured Party under the Security Agreement, including any right, privilege or remedy to take possession of the Units, if any, and (ii) to do any acts which the Secured Party deems proper to protect the security hereof, either with or without taking possession of the Units; subject in any event to the rights of the Lessee as contained in § 11 of the Lease. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Security Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Secured Party that in any suit, proceeding or action brought by the Secured Party under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to

enforce any provisions of the Lease, the Company will save, indemnify and keep the Secured Party harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Secured Party or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Secured Party may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Secured Party may assign to any successor secured party pursuant to the Security Agreement all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Secured Party hereunder.

10. The Company agrees that it will not, without the prior written consent of the Secured Party, enter into any agreement amending, modifying or terminating the Lease

and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the State of _____; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Secured Party at such address as the Secured Party shall designate.

13. The Company, at the Lessee's expense, will promptly cause this Assignment and any consent and agreement hereto by the Lessee to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

14. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

ALLIS-CHALMERS LEASING
CORPORATION

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Secretary

Accepted:

[SECURED PARTY],

by
Vice President

ANNEX I TO APPENDIX B

LESSEE'S CONSENT AND AGREEMENT

The undersigned, THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee), the lessee named in the Lease dated as of August 1, 1970, (hereinafter called the Lease) between ALLIS-CHALMERS LEASING CORPORATION (hereinafter called the Lessor) and the Lessee, and referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of the date hereof, hereby (a) acknowledges receipt of a copy of said Collateral Assignment of Lease and Agreement (hereinafter called the Assignment) and (b) consents to all the terms and conditions of said Assignment.

As an inducement to the Secured Party referred to in the Assignment, to loan funds pursuant to the [title of the Agreement pursuant to which funds are advanced] referred to in the Assignment, pursuant to which the Lessor is granting a security interest in the units of railroad equipment (hereinafter called the Units), leased by the Lessor to the Lessee pursuant to the Lease, and in consideration of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the assignee named in the Assignment (hereinafter called the Assignee), at such address as may be furnished in writing to the Lessee by the Assignee, or as otherwise directed in the Lease; it being hereby

LDM
JH L.C.
MWB

agreed that the obligation of the Lessee to pay all the aforesaid Payments is absolute and unconditional;

(2) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Assignee were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Assignee shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Assignee against any penalty charge or expense arising out of any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or *pari passu* with the right of the Assignee to apply such payments as provided in the Assignment;

(4) the Assignee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Assignee, be terminated or modified, or any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

Anything to the contrary notwithstanding in this Consent and Agreement or the Assignment, the Lessee assumes no obligations or liability with respect to any security of the

Lessor or any other person, it being understood that the Lessee's obligations hereunder are solely to perform the obligations contained in the Lease, as directed by the Lessor herein and in the Assignment.

This Consent and Agreement, when accepted by the Assignee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of _____, and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of:

THE WESTERN PACIFIC RAILROAD
COMPANY,

[CORPORATE SEAL]

by
Vice President—Finance

Attest:

.....
Secretary

The foregoing Consent and Agreement is hereby
accepted, as of the _____ day of _____.

.....